(2022) 05 OHC CK 0013

In the Orissa High Court

Case No : MACA No. 971 Of 2007

Madhumita Nayak And Others — APPELLANT

Vs

Siba Sankar Panda And Another — RESPONDENT

Date of Decision : 04-05-2022

Acts Referred:

Citation : (2022) 05 OHC CK 0013

Hon'ble Judges : B. P. Routray, J

Bench : Single Bench

Advocate : Kalpataru Panigrahi, B. Dasmohapatra

Judgement

B.P. Routray,J.

1. The present appeal by the claimants is directed against the judgment dated 30th July, 2007 of learned Member, 5th MACT, Khurda in M.A.C.T Misc. Case No.78 of 2003 wherein compensation to the tune of Rs.2,25,500/- along with interest @ 7.5% per annum from the date of filing of the claim application, i.e. 23rd September, 2003 has been granted on account of death of the deceased Golaka Nayak @ Golekha Naik in the motor vehicular accident dated 3rd April, 2003.

2. The claimants have prayed for enhancement of the compensation amount in the present appeal.

3. It is contended that the deceased, as a mason, was earning Rs.120/-per day but the learned Tribunal took his income at Rs.1500/- per month erroneously and further deducted 1/3rd instead of 1/6th towards personal expenses without considering the number of dependents as ‘9’. It is further contended that neither any future prospects nor parental consortium has been granted by the learned Tribunal.

4. It is seen from the record that, the age of the deceased as 28 years on the date of accident and his avocation as Mason is not disputed by the insurer. The

submission to count the income of the deceased at Rs.120/-per day is not acceptable for the reason that the prescribed rate of wages on the date of accident, i.e. on 3rd April, 2003 was Rs.50/- per day. As such, considering the admitted avocation of the deceased as Mason, the Tribunal has rightly determined his income at Rs.1500/- per month.

5. There are nine claimants stated to be dependent on the deceased, who are the parents, wife, three children, two brothers and one sister. Therefore, the amount liable to be deducted towards personal expenses should be 1/5th as per the principles decided in the case of National Insurance Co. Ltd. v. Pranay Sethi and Others, (2017) 16 SCC 680.

6. It is further seen from the impugned judgment that the Tribunal did not grant any future prospects and parental consortium, and only granted Rs.2000/- towards funeral expenses, Rs.2,500/- towards loss of estate and Rs.5000/- towards spousal consortium to the widow wife. As such the amount of compensation is liable to be enhanced on those counts also in terms of the principles decided in the case of Pranay Sethi

(Supra). As such, the modified compensation is calculated as follows:-

i)

Annual Income

Rs.1500/- X 12 = Rs.18,000/-

ii)

Deduction of 1/5th towards

Rs.18,000/-

-

3,600/-

=

personal expenses

Rs.14,400/-

iii)

Adding

40% towards future

Rs.14,400/-

+

5,760/-

=

prospects

Rs.20,160/-

iv)

Total loss of dependency

Rs.20,160/-

X

18

=

Rs.3,62,880/-

v)

Adding

general

damages,

Rs.30,000/- + 40,000/- +

spousal consortium and parental

1,20,000/- = Rs.190,000/-

consortium (for 3 children)

Total

Rs.3,62,880 + Rs.1,90,000/- =

Rs.5,52,880/-

7. Accordingly, the claimants are found entitled to a total compensation of Rs.5,52,880/- as calculated above, which is payable along with interest @ 6% per annum from the date of filing of the claim application.

8. Since the claimant – Appellants have already received compensation of Rs.2,25,500/- along with interest @ 7.5% as per submission of the parties, considering the differential amount along with interest @ 6%, the insurer Respondent No.2, i.e. New India Assurance Co. Ltd. is directed to pay a further consolidated sum of Rs.7,00,000/-(seven lakhs) to the claimants – Appellant Nos.1, 2, 3 and 4 on equal proportion who are wife and children of the deceased, by depositing the same before the Tribunal within a period of two months from today.

9. The MACA is disposed of.

....